

# Berkowitz Lichtstein

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File#

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June 29, 2023

## Via ECF

Hon. Michael E. Farbiarz, USDJ  
Martin Luther King Building  
& U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07102

**RE: Cynthia Ham v. Novartis International AG, et als.**  
**Civil Action No.: 2:23-cv-03503**

Dear Judge Farbiarz:

This office represents plaintiff Cynthia Ham in the above referenced wrongful termination action. I am writing to draw your attention to the Amended Complaint we filed earlier today (ECF4). The Amended Complaint was filed as a matter of course within twenty one (21) days of service on the first defendant pursuant to Fed. R. Civ. P. 15(a)(1)(A).

This wrongful termination action was filed by Ms. Ham in New Jersey Superior Court (MRS-L-946-23) alleging violations of the New Jersey Conscientious Employee Protection Act (“CEPA”), N.J.S.A. 39:19-1, *et seq.*, and the New Jersey Law Against Discrimination (“NJLAD”), N.J.S.A. 10:5-1, *et seq.* Ms. Ham, formerly a high-level compliance employee at Novartis, alleges that she was harassed and wrongfully terminated because she blew the whistle on a series of illegal pharmaceutical marketing programs orchestrated by Novartis’ upper management. Ms. Ham further alleges that she was targeted and denied accommodation after she developed brain cancer and required medical leave.

On June 29, 2023, defendants filed a Notice of Removal arguing that certain ancillary discussions in Ms. Ham’s detailed complaint relating to her application for long-term and short-term disability benefits while on medical leave give rise to a potential embedded federal question under ERISA and therefore provides the District Court with original jurisdiction over the dispute (ECF 1).

Novartis’ argument is facially flawed. Ms. Ham’s original complaint did not assert a claim under ERISA. Ms. Ham did not assert that she was denied ERISA benefits or was retaliated against for seeking such benefits. Ms. Ham does not claim that she suffered damage to her ERISA entitlements. The

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discussion of Ms. Ham's disability application process was provided as context for the state law claims under which does seek substantive relief. Conversely, ERISA does not provide a remedy for the whistleblower or disability discrimination claims asserted in the complaint. Accordingly, there is no reasonable way to discern an ERISA claim from the original complaint and no basis for federal jurisdiction.

To clarify this point, the Amended Complaint excises any discussion of Ms. Ham's long-term or short-term disability benefits and makes it abundantly clear that Ms. Ham is not asserting any claims or allegations under ERISA. Novartis' already strained argument is therefor moot. Given the lack of any basis for federal jurisdiction, we will be filing a motion to remand the matter to the New Jersey Superior Court for adjudication, pursuant to 28 U.S.C.A. § 1447.

In addition, the Amended Complaint adds more specific claims for liability against Novartis AG, which was already a party to this action and is unrelated to the issue of federal jurisdiction.

We thank the Court for its attention to this matter.

Respectfully submitted,



JOHN MESSINA

JM:ls

Enclosure

CC: Justin T. Quinn, Esq.  
Rebecca Fitzpatrick, Esq.